



## Barnett, Keith

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**From:** Barnett, Keith  
**Sent:** Monday, March 06, 2017 6:44 PM  
**To:** 'Alexander Burke'  
**Subject:** RE: your discovery related question

Alex.

I have a more thorough answer your question as to "Why wouldn't one be able to query the data to generate a set of all outbound calls that were made using any dedicated dialer trunk... or using other Microcall data that signifies that a call was made using a dialer or originated from the dialer? And if one can generate a list of dialer calls, that list can be compared to the list of "wrong number" calls to create a list of calls to phone numbers that appear on both lists.

As I stated to you before, a query cannot be run. The dedicated trunk is used for both dialer and non-dialer calls. As a result, there is no way to demarcate out the dialer calls. The trunk is not used solely for dialer calls. Microcall does not contain all of the information to link all of the calls up. Microcall is configured for the collector/agent to monitor their call stats for each of their average call length things of that nature. Microcall is not set up for individual phone number level. Microcall does not provide an easy way to extract data other than a canned report.

With respect to your request for documents related to unattended outbound calls from CUBS, UCB does not tag unattended calls. Therefore, this information cannot be produced.

I have checked with Mark with respect to his availability in Colorado or Ohio this month. My availability does not match with yours, so someone else will defend the deposition if it goes forward. Please note that we will object to your deposition notice with respect to the date and the scope in light of the fact that (1) you asked Mark during his deposition about querying multiple databases and writing a program; and (2) you also asked him the manner in which a list can be developed for outbound dialer and unattended calls.

### Keith Barnett

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**From:** Alexander Burke [mailto:ABurke@burkelawllc.com]  
**Sent:** Friday, March 03, 2017 12:48 PM  
**To:** Barnett, Keith  
**Cc:** Ostroff, Ethan G.; Larry Smith; Dan Marovitch  
**Subject:** RE: your discovery related question

Thanks. We will issue the depo notice.

What is the timeframe for production of the requested queryable data, and an answer as to providing the CUBS and MicroCall data to us so that we can do an analysis ourselves?

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**From:** Barnett, Keith [mailto:[Keith.Barnett@troutmansanders.com](mailto:Keith.Barnett@troutmansanders.com)]

**Sent:** Thursday, March 2, 2017 9:34 AM

**To:** Alexander Burke

**Cc:** Ostroff, Ethan G.; Larry Smith; Dan Marovitch

**Subject:** RE: your discovery related question

See my responses below in red. I apologize for the delayed response. I am not putting you on the back burner. I have been traveling for work and had a death on my wife's side of the family, which has caused me to be spread thinner than usual. I am available to talk today if the back and forth emails are not conducive to getting on the same page.

Thanks,

Keith

### Keith Barnett

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**From:** Alexander Burke [mailto:[ABurke@burkelawllc.com](mailto:ABurke@burkelawllc.com)]

**Sent:** Tuesday, February 28, 2017 2:39 PM

**To:** Barnett, Keith

**Cc:** Ostroff, Ethan G.; Larry Smith; Dan Marovitch

**Subject:** RE: your discovery related question

Thanks Keith.

Below I underlined my original question, and indented your response, and articulated a reply.

QUESTION 1. "We request either a telephone call with Mark to discuss what data exists and does not exist as to Microcall, or a deposition on the subject."

### RESPONSE

I do not completely understand what you mean by this question. You asked me whether UCB has the ability to run a query that would determine which of the calls were made using a system that had the capacity to be a dialer; and whether the Microcall database can be queried to determine which

calls were made using a dialer. I told you that I asked Mark Beirdneau, UCB's IT person and 30(b)(6) deponent and he said that the answer to both questions is no.

You took Mr. Beirdneau's deposition as UCB's 30(b)(6) deponent. That deposition covered a broad range of topics, including topics beyond the scope of the 30(b)(6) notice. Among other things, you asked Mr. Beirdneau questions about the UCB databases and what can be queried from the database and Microcall. Simply put, you have already asked Mr. Beirdneau these questions stated in your e-mail, or could have done so. As a result, UCB denies your request for a telephone call with Mr. Beirdneau or a deposition on the subject. If there is something that I am missing, I am happy to revisit the issue with you.

REPLY: If you contend we are not allowed to take another 30b6 deposition, please tell us which one of our earlier topics already covered these issues.

I am not saying that you are not allowed to take another 30(b)(6) deposition. I am saying that you asked Mr. Beirdneau about what database searches he ran and what queries were possible during his deposition. Although you did not explicitly list these items on the 30(b)(6) deposition notice, I allowed you to ask these questions without objection in the interest of allowing you to have a thorough and sifting examination of the witness. It appears that you are seeking a second bite at the apple. I accommodated your additional question by asking Mr. Beirdneau your additional questions and I have provided you with his response. You asked about queries, and Mr. Beirdneau answered, without objection, at pages 36-38, 42, 49, 51-56 and 66.

QUESTION 2. Looking at these docs, it seems like Microcall keeps track of several data points that (1) can be queried without developing a program to create a list of calls to a particular number, and (2) may tell us whether calls were made using a dialer. On the second point, for example, we see a few references to dialers on the attached UCB-Meredith 000005-6. For example, we see that trunk 5518 appears to be a dedicated dialer trunk.

#### RESPONSE

Mr. Beirdneau has already testified as to the limitations of the queries. During his deposition, you asked him in a myriad of ways on what can and cannot be queried and he fully answered your questions on this issue without any objections from me.

REPLY: I understood the earlier testimony about the limited ability to run queries to be limited to the CUBS system. Was that understanding incorrect?

I am basing my response upon my review of the deposition transcript at the pages listed above. That is my understanding. This particular question has been forwarded to Mr. Beirdneau and will be answered to the extent that his initial response was not clear.

3. Why wouldn't one be able to query the data to generate a set of all outbound calls that were made using any dedicated dialer trunk... or using other Microcall data that signifies that a call was made using a dialer or originated from the dialer? And if one can generate a list of dialer calls, that list can be compared to the list of "wrong number" calls to create a list of calls to phone numbers that appear on both lists.

#### RESPONSE

See my response to number 2, above. In the interest of candor, however, I have forwarded your question to Mr. Beirdneau and expect a response from him shortly.

REPLY: Again, I think the earlier testimony was limited to CUBS. If you don't think we can do this, then as mentioned to the Court we request that all of UCB's data be produced, and we will have our own expert parse it.

See my responses above.

4. Absent agreement on these points, we request dates for a 30(b)(6) deposition on the following subject:

1. What data exists to develop as close to a complete list of outbound dialer and/or unattended calls as possible, including if necessary querying multiple databases or writing a program.
2. What specific efforts may be useful or necessary to develop a list of outbound dialer and/or unattended calls.

RESPONSE

Like I said above, Mr. Beirdneau already answered questions concerning the foregoing subjects during his 30(b)(6) deposition. I did not object to any of your questions that went beyond the scope of the 30(b)(6) deposition notice and you definitely asked questions within the foregoing categories. In any event, I forwarded these questions to Mr. Beirdneau.

REPLY: Regardless of whether I may have asked questions, I crafted these new topics so as not to overlap with my prior topics. Please provide some dates for these depositions or specify which topics overlap.

I understand that you crafted these questions to avoid overlap, but my point is that you already asked these questions at the pages cited above.

5. We also request that UCB please produce the data for unattended outbound calls it can, from CUBS.

RESPONSE

I have forwarded your request to UCB and expect to hear a response shortly.

REPLY: Thanks.

Alex

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**From:** Barnett, Keith [mailto:[Keith.Barnett@troutmansanders.com](mailto:Keith.Barnett@troutmansanders.com)]

**Sent:** Tuesday, February 28, 2017 8:36 AM

**To:** Alexander Burke

**Cc:** Ostroff, Ethan G.

**Subject:** RE: your discovery related question

Alex,

Alex

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**From:** Barnett, Keith [mailto:[Keith.Barnett@troutmansanders.com](mailto:Keith.Barnett@troutmansanders.com)]

**Sent:** Friday, February 17, 2017 1:12 PM

**To:** Alexander Burke

**Cc:** Long, David; Ostroff, Ethan G.

**Subject:** RE: your discovery related question

Alex,

I have confirmed with Mark (the guy you deposed) that: (1) UCB does not have the ability to run a query that would determine which of the calls were made using a system that had the capacity to be a dialer; and (2) the Microcall database cannot be queried to determine which calls were made using a dialer.

### Keith Barnett

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**From:** Alexander Burke [mailto:[aburke@burkelawllc.com](mailto:aburke@burkelawllc.com)]

**Sent:** Wednesday, February 15, 2017 4:45 PM

**To:** Barnett, Keith

**Subject:** RE: your discovery related question

Thanks. Let me know if there is any procedural issue. We can get on the phone and work it out.

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